



## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 381

[Docket No. 21-CRB-0002-PBR (2023-2027)]

#### Determination of Rates and Terms for Public Broadcasting (PB IV)

**AGENCY:** Copyright Royalty Board (CRB), Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges solicit comments on proposed rates and terms for use of certain works in connection with noncommercial broadcasting for the period from January 1, 2023, through December 31, 2027.

**DATES:** Comments and objections, if any, are due on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments and objections, identified by docket number 21-CRB-0002-PBR (2023-2027), online through eCRB at <https://app.crb.gov>.

*Instructions:* To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at <https://app.crb.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB, the Copyright Royalty Board's electronic filing and case

management system, at <https://app.crb.gov/>, and search for docket number 21-CRB-0002-PBR (2023-2027).

**FOR FURTHER INFORMATION CONTACT:** Anita Brown, CRB Program Specialist, (202) 707-7658, [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 118 license. 17 U.S.C. 801(b)(1), 804(b)(6). In accordance with section 804(b)(6), the Judges commenced the proceeding to set rates and terms for the period 2023-2027 on January 5, 2021. (86 FR 325).

In the *Federal Register* notice, the Judges requested that interested parties submit petitions to participate. 86 FR 325 (January 5, 2021). Petitions to Participate (PTPs) were received from: The American Society of Authors, Composers and Publishers (ASCAP); SESAC Performing Rights, LLC (SESAC); Broadcast Music, Inc. (BMI); Educational Media Foundation (EMF); Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and the Public Broadcasting Service (PBS), jointly (the Public Broadcasting Entities (PBE)); National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); the Church Music Publishers' Association (CMPA); The Harry Fox Agency (HFA); Global Music Rights, LLC (GMR); and David Powell.

The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit written direct statements no later than September 10, 2021. Notice of Participants, Commencement of Voluntary Negotiation

Period, and Case Scheduling Order (Feb. 9, 2021). The Judges amended the case schedule four times to accommodate ongoing negotiations. *See* Order Granting Joint Motion to Postpone Submission of Written Direct Statements (Dec. 1, 2021). In July 2021, September 2021, November 2021, and December 2022 participants filed notices of settlement and proposed rates and terms for adoption<sup>1</sup>. No participant filed a written direct statement.

There are two ways copyright owners and public broadcasting entities<sup>2</sup> may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements "shall be given effect in lieu of any determination by the \* \* \* Copyright Royalty Judges," provided that copies of the agreement are submitted to the Judges "within 30 days of execution." 17 U.S.C. 118(b)(2). The Judges received five agreements in this category for which no further action is required.<sup>3</sup>

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set

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<sup>1</sup> The Judges received no notice of settlement or proposed rates and terms from participant David Powell.

<sup>2</sup> A "public broadcasting entity" is defined as a "noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)" of section 118. 17 U.S.C. 118(f).

<sup>3</sup> The Judges received agreements with PBE from BMI, HFA, SESAC, ASCAP, and GMR on October 29, 2021; November 2, 2021; November 2, 2021; January 28, 2022, and December 29, 2022, respectively.

by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. In addition, the Judges shall provide participants in the proceeding the opportunity to object to its adoption as a basis for statutory rates and terms. See section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

The Judges received negotiated rates and terms from ASCAP (Jul. 2, 2021), BMI (May 17, 2021), GMR (Sept. 9, 2021) and SESAC (Sept. 3, 2021), and jointly from all four (Dec. 7, 2022) regarding rates for compositions in their repertories by certain public broadcasters<sup>4</sup>; and from NRBNMLC jointly with ASCAP (Sept. 9, 2021), BMI (Sept. 10, 2021), GMR (Sept. 9, 2021, and Dec. 7, 2022)), SESAC (Sept. 10, 2021) and HFA (June 21, 2021) regarding rates for compositions in their repertories by certain other public broadcasters.<sup>5</sup>

### **ASCAP, BMI, GMR, and SESAC Joint Proposal**

The joint proposal of ASCAP<sup>6</sup>, BMI, GMR, and SESAC proposes to modify the royalty rates set forth in § 381.5. The rates proposed regarding ASCAP reflect a modification of the fees in different rate tiers. Joint Proposal at 4, App. A. The SESAC submission retains a flat rate, which it proposes adjusting, starting in 2023, by the change in the Consumer Price Index or one-and-a-half percent, whichever is greater. SESAC Proposal App. A.

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<sup>4</sup> The joint proposal aggregates the separate proposals and is to be considered in place of them. *See* Joint Proposal at 1 n.1.

<sup>5</sup> The Judges already published for comment the proposed rates and terms the Judges received early in 2021 from three participants. *See* 86 FR 34674 (Jul. 1, 2021) (BMI proposal); 86 FR 34676 (Jul. 1, 2021) (HFA/NRBNMLC proposal). The comment period has ended, and the Judges received no comments. To minimize confusion that may occur from issuing more than one final rule, those proposed rates are repeated in the regulatory language of this proposed rule and the Judges do not seek comment on them.

<sup>6</sup> The joint proposal is supported by the National Association of College and University Business Officers (NACUBO) and implicitly by the American Council on Education (ACE). Joint Proposal at 3 n.2.

The GMR proposals add a section for compositions in its repertory that provide for an initial rate for 2023; provide for adjusting that rate, starting in 2024, by the change in the Consumer Price Index or one-and-a-half percent, whichever is greater; add a term providing rate options for certain entities broadcasting primarily in a religious format; and add references to GMR in paragraphs related to the rates. *See* Joint PROs Proposal. App. A at 9<sup>7</sup>.

### **NRBNMLC Joint Proposals**

The joint proposals entered into by NRBNMLC and each of ASCAP, BMI, GMR, and SESAC<sup>8</sup> propose adjusting the rates and structure in (ASCAP, BMI, SESAC), and adding some rates to (GMR), the current provisions set forth in § 381.6, and replacing “January 1, 2018” with “January 1, 2023” and “December 31, 2022” with “December 31, 2027” in § 381.1<sup>9</sup>. ASCAP and NRBNMLC Joint proposal at 3; BMI and NRBNMLC Joint proposal at 5; SESAC and NRBNMLC Joint proposal at 3; GMR and NRBNMLC Joint proposal at 4.

Three of the four joint proposals (those from NRBNMLC and ASCAP, SESAC, and GMR) propose a revision to 381.6(4) to add the words “in the aggregate”. All participants proposing the revision later agree that the revision is not necessary, NRBNMLC being the only one bound by that provision. NRBNMLC supports the language change, but would not object to maintaining the current language if the published document of the rates makes clear “that the \$1 fee is a one-time aggregate fee that merely ensures universal rate coverage, not a fee assessed multiple times.” *See* Response of the NRBNMLC to the CRJ’s Order 6 . . . at 4-5 (Dec, 7, 2022). The Judges

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<sup>7</sup> The Joint PROs Proposal was filed subsequent to GMR’s motion of December 2, 2022, requesting amendments to §§ 381.1, 381.5, and 381.10, and thus the motion is DENIED as moot.

<sup>8</sup> All proposals mention that EMF joins in the proposals. The ASCAP and NRBNMLC joint proposal mention that Church Music Publishers Association., Inc., supports the proposal.

<sup>9</sup> Proposed changes to § 381.7(b)(4) pursuant to a joint proposal from HFA and NRBNMLC were published on June 30, 2021, and are published again here, not for comment but rather in order to include all proposed changes to § 381 in one document.

have thus hereby stated the clarification from the NRBNMLC in this supplementary information.

### **PBE Joint Proposals**

The Judges received a joint proposal from PBE and HFA to modify the fees in § 381.7 for uses that would be binding on all owners and entities using the same license.

The Judges received a joint proposal from CPB and PBS to continue the existing rates in § 381.8 for the use of and making reproductions of published pictorial, graphic, and sculptural works, and to make changes to the terms regarding when those rates apply and related reporting requirements.<sup>10</sup>

### **Proposal re format of cue sheets and summaries**

The Judges propose technical revisions to §§ 381.7(e) and 381.8(e)(1) to require online filing of cue sheets or summaries in lieu of submissions of electronic copies on compact disk or floppy diskette. This change would conform these sections with § 303.5(a) that generally requires online filing of documents in eCRB.

As noted above, the members of the public may comment on, and participants in this rate proceeding may comment on and object to, any or all of the proposed regulations and the proposed technical revision contained in this document.

### **List of Subjects in 37 CFR Part 381**

Copyright, Music, Radio, Television, Rates.

### **Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 381 to chapter III of title 37 of the Code of Federal Regulations as set forth below:

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<sup>10</sup> Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and Public Broadcasting Service (PBS) filed a “Joint petition” to participate in this proceeding, as petitioners with similar interests under the designation Public Broadcasting Entities (PBE), pursuant to 37 CFR 351.1(b)(1)(ii). The participants that submitted the joint proposal, CPB and PBS, share similar interests, but the Judges do not presume or find that they share identical interests. Under the present circumstances, the Judges consider the CPB and PBS proposal pursuant to section 801(b)(7)(A).

**PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION  
WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING**

1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1) and 803.

**§ 381.1 [Amended]**

2. In § 381.1, remove the year “2018” and add in its place the year “2023”, and remove the year “2022” and add in its place the year “2027”.

3. In § 381.4, revise paragraphs (a) and (c) to read as follows:

**§ 381.4 Performance of musical compositions by PBS, NPR and other public  
broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).**

(a) *Determination of royalty rate.* The following rates and terms shall apply to the performance by the Public Broadcasting Service (PBS), National Public Radio (NPR) and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements: The royalty shall be \$1.

\* \* \* \* \*

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with American Society of Authors, Composers and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Global Music Rights, LLC (GMR) or SESAC Performing Rights, LLC (SESAC) covering the license period January 1, 2023, to December 31, 2027, to provide a music

use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

4. In § 381.5, revise paragraphs (c) through (e) to read as follows:

**§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

\* \* \* \* \*

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) *Music Fees.*

Table 1 to paragraph (c)(1)(i)						
	Number of Full-Time Students	2023	2024	2025	2026	2027
Level 1	< 1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000 - 4,999	\$451	\$463	\$475	\$487	\$500
Level 3	5,000 - 9,999	\$619	\$635	\$652	\$669	\$686
Level 4	10,000 - 19,999	\$801	\$822	\$843	\$865	\$887
Level 5	20,000 +	\$1,009	\$1,035	\$1,062	\$1,090	\$1,118

(ii) Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current (Federal Communications Commission (FCC) license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:



(i) *Music fees.*

Table 2 to paragraph (c)(2)(i)						
	Number of Full-Time Students	2018	2019	2020	2021	2022
Level 1	< 1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000 - 4,999	\$451	\$463	\$475	\$487	\$500
Level 3	5,000 - 9,999	\$619	\$635	\$652	\$669	\$686
Level 4	10,000 - 19,999	\$801	\$822	\$843	\$865	\$887
Level 5	20,000 +	\$1,009	\$1,035	\$1,062	\$1,090	\$1,118

(ii) Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2023: The 2022 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(ii) 2024: The 2023 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of:

(A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor Statistics during the twelve

(12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year; or

(B) One and one-half percent (1.5%).

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) 2023: \$174.00 per station, subject to an annual cost of living adjustment in accordance with § 381.10.

(ii) 2024: The 2023 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(vi) For stations broadcasting primarily in a religious format (including, without limitation, Contemporary Christian music, praise and worship, Gospel, Southern Gospel, Spanish religious music, inspirational, religious, etc.), at their option for 2023-2027, either the rates set forth in paragraph (c)(4) of this section or the rates set forth in § 381.6(d)(4).

(5) For the performance of all other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, SESAC, and GMR not later than January 31 of each year. Each annual payment to ASCAP, BMI, SESAC, and GMR shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its

current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, SESAC, and GMR.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC, and GMR shall not in any one calendar year request more than 10 stations to furnish such reports.

5. Amend § 381.6 by revising paragraphs (d) through (f) to read as follows:

**§ 381.6 Performance of musical compositions by other public broadcasting entities.**

\* \* \* \* \*

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

Table 1 to paragraph (d)(1)(i)						
	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000 – 249,999	\$754	\$769	\$784	\$800	\$816
Level 3	250,000 – 499,999	\$1,346	\$1,373	\$1,400	\$1,428	\$1,457
Level 4	500,000 – 999,999	\$2,017	\$2,057	\$2,098	\$2,140	\$2,183
Level 5	1,000,000 – 1,499,999	\$2,691	\$2,745	\$2,800	\$2,856	\$2,913
Level 6	1,500,000 – 1,999,999	\$3,363	\$3,430	\$3,499	\$3,569	\$3,640
Level 7	2,000,000 – 2,499,999	\$4,035	\$4,116	\$4,198	\$4,282	\$4,368
Level 8	2,500,000 – 2,999,999	\$4,708	\$4,802	\$4,898	\$4,996	\$5,096

Level 9	3,000,000 and above	\$6,726	\$6,861	\$6,998	\$7,138	\$7,280
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(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

Table 2 to paragraph (d)(1)(ii)						
	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000 – 249,000	\$574	\$585	\$597	\$609	\$621
Level 3	250,000 – 499,999	\$574	\$585	\$597	\$609	\$621
Level 4	500,000 – 999,999	\$574	\$585	\$597	\$609	\$621
Level 5	1,000,000 – 1,499,999	\$942	\$961	\$980	\$1,000	\$1,020
Level 6	1,500,000 – 1,999,999	\$1,177	\$1,201	\$1,225	\$1,249	\$1,274
Level 7	2,000,000 – 2,499,999	\$1,412	\$1,440	\$1,469	\$1,498	\$1,528
Level 8	2,500,000 – 2,999,999	\$1,647	\$1,680	\$1,714	\$1,748	\$1,783
Level 9	3,000,000 and above	\$2,354	\$2,401	\$2,449	\$2,498	\$2,548

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

Table 3 to paragraph (d)(2)(i)						
	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$574	\$585	\$597	\$609	\$621
Level 2	25,000 – 249,000	\$754	\$769	\$784	\$800	\$816
Level 3	250,000 – 499,999	\$1,346	\$1,373	\$1,400	\$1,428	\$1,457
Level 4	500,000 – 999,999	\$2,017	\$2,057	\$2,098	\$2,140	\$2,183
Level 5	1,000,000 – 1,499,999	\$2,691	\$2,745	\$2,800	\$2,856	\$2,913
Level 6	1,500,000 – 1,999,999	\$3,363	\$3,430	\$3,499	\$3,569	\$3,640

Level 7	2,000,000 – 2,499,999	\$4,035	\$4,116	\$4,198	\$4,282	\$4,368
Level 8	2,500,000 – 2,999,999	\$4,708	\$4,802	\$4,898	\$4,996	\$5,096
Level 9	3,000,000 and above	\$6,726	\$6,861	\$6,998	\$7,138	\$7,280

(ii) Talk Format Station Fees (Stations with < 20% Feature Music programming):

Table 4 to paragraph (d)(2)(ii)						
	Population Count	Calendar Years				
		2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$265	\$270	\$276	\$281	\$287
Level 2	25,000 – 249,000	\$574	\$585	\$597	\$609	\$621
Level 3	250,000 – 499,999	\$574	\$585	\$597	\$609	\$621
Level 4	500,000 – 999,999	\$574	\$585	\$597	\$609	\$621
Level 5	1,000,000 – 1,499,999	\$942	\$961	\$980	\$1,000	\$1,020
Level 6	1,500,000 – 1,999,999	\$1,177	\$1,201	\$1,225	\$1,249	\$1,274
Level 7	2,000,000 – 2,499,999	\$1,412	\$1,440	\$1,469	\$1,498	\$1,528
Level 8	2,500,000 – 2,999,999	\$1,647	\$1,680	\$1,714	\$1,748	\$1,783
Level 9	3,000,000 and above	\$2,354	\$2,401	\$2,449	\$2,498	\$2,548

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with >=20% Feature Music programming:

Table 5 to paragraph (d)(3)(i)						
	Population Count	2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$189	\$192	\$196	\$200	\$204
Level 2	25,000 – 249,000	\$189	\$192	\$196	\$200	\$204
Level 3	250,000 – 499,999	\$315	\$321	\$328	\$334	\$341
Level 4	500,000 – 999,999	\$473	\$482	\$492	\$502	\$512
Level 5	1,000,000 – 1,499,999	\$630	\$643	\$656	\$669	\$682
Level 6	1,500,000 – 1,999,999	\$789	\$805	\$821	\$837	\$854
Level 7	2,000,000 – 2,499,999	\$945	\$964	\$983	\$1,003	\$1,023

Level 8	2,500,000 – 2,999,999	\$1,104	\$1,126	\$1,149	\$1,172	\$1,195
Level 9	3,000,000 and above	\$1,577	\$1,608	\$1,640	\$1,673	\$1,707

(ii) Talk fees for stations with <20% Feature Music programming:

Table 6 to paragraph (d)(3)(ii)						
	Population Count	2023	2024	2025	2026	2027
Level 1	0 – 24,999	\$130	\$133	\$135	\$138	\$141
Level 2	25,000 – 249,000	\$189	\$192	\$196	\$200	\$204
Level 3	250,000 – 499,999	\$189	\$192	\$196	\$200	\$204
Level 4	500,000 – 999,999	\$189	\$192	\$196	\$200	\$204
Level 5	1,000,000 – 1,499,999	\$221	\$225	\$229	\$234	\$239
Level 6	1,500,000 – 1,999,999	\$276	\$282	\$287	\$293	\$299
Level 7	2,000,000 – 2,499,999	\$331	\$337	\$344	\$351	\$358
Level 8	2,500,000 – 2,999,999	\$386	\$394	\$402	\$410	\$418
Level 9	3,000,000 and above	\$552	\$563	\$574	\$586	\$597

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) For a public broadcasting entity within the scope of this section that is broadcasting one or more radio stations as of January 1, 2023, a single \$50 fee for each such station for the entire five-year license term from 2023 through 2027; and

(ii) For a public broadcasting entity within the scope of this section that begins broadcasting a radio station after January 1, 2023 but before December 31, 2027, a pro-rated amount equal to \$10 multiplied by the number of full or partial years remaining in the 2023-2027 license term as of the date on which the radio station begins broadcasting (e.g., a public broadcasting entity that begins broadcasting a radio station in 2025 shall pay \$30 for that station for the remainder of the term);

(5) For the performance of all other such compositions, from 2023 through 2027, \$1.

(e) *Payment of royalty rate*—(1) *ASCAP, BMI, and SESAC*. The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

(2) *GMR*. For fees due pursuant to paragraph (d)(4)(i) of this section, the public broadcasting entity shall pay the required royalty rate to GMR not later than January 31, 2023. For fees due pursuant to paragraph (d)(4)(ii) of this section, the public broadcasting entity shall pay the required royalty rate to GMR not later than 60 days after the public broadcasting entity begins to broadcast the radio station for which such fee is due. If a fee is paid pursuant to paragraph (d)(4)(i) or (ii) of this section for a radio station and that station changes ownership during the course of the license term but continues to fall within the scope of this section, no additional fee shall be due for that station during the 2023-2027 license term.

(f) *Records of use*. A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC, and GMR, upon request, a music-use report during one

week of each calendar year. ASCAP, BMI, SESAC, and GMR each shall not in any one calendar year request more than 10 stations to furnish such reports.

6. In § 381.7, revise paragraphs (a) through (c), and (e) to read as follows:

**§ 381.7 Recording rights, rates, and terms.**

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, including transmission via the internet by PBS and NPR. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2023-2027
(A) Feature	\$121.07
(B) Concert feature (per minute)	\$36.36
(C) Background	\$61.19
(D) Theme:	
(1) Single program or first series program	\$61.19
(2) Other series program	\$24.84



(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2023-2027
(A) Feature	\$10.01
(B) Concert feature (per minute)	\$2.63
(C) Background	\$4.35
(D) Theme:	
(1) Single program or first series program	\$4.35
(2) Other series program	\$1.73

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2023-2027
(i) Feature	\$13.11
(ii) Concert feature (per minute)	\$19.24
(iii) Background	\$6.56
(iv) Theme:	
(A) Single program or first series program	\$6.56
(B) Other series program	\$2.62

(3) For purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance, or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2023-2027
(i) Feature	\$.83
(ii) Feature (concert) (per half hour)	\$1.72
(iii) Background	\$.42

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2022, shall be subject to the royalty rates established in this schedule.

(6) For each use licensed herein pursuant to paragraphs (b)(1)(i) and (b)(2) of this section for transmission via the internet, the royalty fees shall include a pro-rata share of \$2,000 per calendar year, which share shall be determined by calculating the aggregate amount of royalty fees earned during that calendar year and dividing the sum by the amount of royalty fees earned for each use.

(c) *Payment of royalty rates.* The required royalty due under paragraphs (b)(1), (b)(2), and (b)(4) of this section shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding

calendar year. The required royalty due under paragraph (b)(6) of this section for each calendar year of the statutory license term shall be paid to each known copyright owner not later than March 31 of each following year for PBS- or NPR-distributed uses via the internet during the preceding calendar year.

\* \* \* \* \*

(e) *Filing of use reports with the Copyright Royalty Judges. Deposit of cue sheets or summaries.* PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the Copyright Royalty Judges via online filing in eCRB one electronic copy of their standard music cue sheets or summaries of same listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the Copyright Royalty Judges upon their request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

**§ 381.8 [Amended]**

7. In § 381.8:

a. In paragraph (b)(1), add the words “not otherwise licensed by the copyright owner” at the end of the introductory text;

b. In paragraphs (b)(1)(i) and (ii), remove the year “2013-2017” and add in its place the year “2023-2027”;

c. In paragraph (d)(1) add the words “, upon request,” after “shall maintain and”;  
and

d. In paragraph (f)(1) remove the year “2017” and add in its place the year  
“2027”.

8. Revise § 381.10 to read as follows:

**§ 381.10 Cost of living adjustment.**

(a) On or before December 1, 2023, the Copyright Royalty Judges shall publish in the *Federal Register* a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2022, to the most recent Index published prior to December 1, 2023. On or before each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the *Federal Register* a revised schedule of the rates for § 381.5(c)(3) and (4), the rate to be charged for compositions in the repertory of SESAC and GMR, which shall adjust the royalty amounts established in a dollar amount according to the greater of:

(1) The change in the cost of living determined as provided in paragraph (a) of this section; or

(2) One-and-a-half percent (1.5%).

(3) Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for the rates for § 381.5(c)(3) and (4) shall become effective thirty (30) days after publication in the *Federal Register*.

Dated: January 19, 2022.

**David P. Shaw,**

*Chief Copyright Royalty Judge.*

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